

ASSEMBLY BILL

No. 691

Introduced by Assembly Member Muratsuchi

February 21, 2013

An act to add Section 6311.5 to the Public Resources Code, relating to state lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 691, as introduced, Muratsuchi. State lands: granted trust lands: sea level rise.

Existing law vests with the State Lands Commission control over specified state lands, including tidelands and submerged lands. Existing law grants to various local entities the right, title, and interest of the state in and to certain tidelands and submerged lands in trust generally for purposes of commerce, navigation, and fisheries, and for other public trust purposes.

This bill would provide that addressing the impacts from sea level rise for all of its legislatively granted public trust shall be among the management priorities of a local trustee, as defined. The bill would require a local trustee whose gross public trust revenues exceed \$250,000 to prepare and submit to the commission, no later than July 1, 2019, except as provided, a descriptive plan of how it proposes to address sea level rise. The bill would permit, but not require, a local trustee whose gross public trust revenues are \$250,000 or less to prepare and submit a plan to the commission. The bill would require a local trustee to consider and use relevant information from specified reports on sea level rise in preparing the plan. The bill would require that the commission make those plans available to the public on its Internet Web Site, and send electronic copies to certain other public entities.

By adding to the duties of local agencies that are local trustees of granted public trust lands, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Upon admission to the United States, and as incident of its
4 sovereignty, the State of California received title to the tidelands,
5 submerged lands, and beds of navigable waterways within its
6 borders to be held subject to the public trust doctrine for statewide
7 public purposes, including commerce, navigation, fisheries,
8 preservation of lands in their natural state, open space, wildlife
9 habitat, water-oriented recreation, and other recognized public
10 trust uses.

11 (b) The state has made grants of public trust lands to over 80
12 local public entities, each of which manages the state's public trust
13 lands as trustee pursuant to the common law public trust doctrine,
14 statutory grants, the California Constitution, and other laws
15 governing the trust and the trustee's fiduciary responsibilities.

16 (c) A local trustee of granted public trust lands is charged with
17 managing the state's granted public trust lands on behalf of the
18 state for the benefit of all the people of California.

19 (d) As part of its fiduciary duty, a local trustee of granted public
20 trust lands is required to take reasonable steps under the
21 circumstances to take and keep control of and preserve the trust
22 property.

23 (e) The effects of climate change and sea level rise will have
24 enormous implications for the state's economic and social future,
25 and have the potential to have a wide range of impacts to critical
26 infrastructure, such as schools, roads, hospitals, emergency

1 facilities, wastewater treatment plants, airports, ports, and energy
2 facilities.

3 (f) Coastal counties in California are home to approximately 32
4 million people.

5 (g) The coastal economy contributes more than \$50 billion
6 annually to the State of California.

7 (h) Port activities in California generate an estimated \$7 billion
8 in state and local tax revenues annually and employ more than
9 one-half million people in California. Nationwide more than two
10 million jobs are connected to California ports.

11 (i) Research funded by the state has shown that a 55-inch sea
12 level rise, with a 100-year storm event along the California coast,
13 places approximately 480,000 people (based on the population in
14 2009) and nearly \$100 billion of property at risk.

15 (j) Coastal habitats, including wetlands and beaches, provide
16 important ecological, recreational, and scenic functions and values,
17 which are threatened by sea level rise, unless actions are taken to
18 effectively manage these habitats and adjacent lands.

19 (k) Many state entities, such as the Governor's Office of
20 Planning and Research, the Strategic Growth Council, the Ocean
21 Protection Council, the San Francisco Bay Conservation and
22 Development Commission, the California Coastal Commission,
23 and the State Lands Commission have supported efforts to develop
24 tools and to increase accessibility to existing state data, and to
25 provide additional data and tools to help local, regional, and state
26 agencies make informed decisions.

27 (l) In 2007, more than 40 percent of the total containerized cargo
28 entering the United States arrived at California ports, and almost
29 30 percent of the nation's exports left from California ports.

30 (m) In 2002, cargo operations shut down at West Coast ports
31 for 10 days, and the estimated loss to the national economy was
32 \$1 billion per day.

33 (n) The use of revenues received from trust lands and trust assets
34 by a local trustee of granted public trust lands is limited by the
35 statutory grant, the public trust doctrine, and other laws governing
36 the trust. An evaluation of the impacts of sea level rise on granted
37 public trust lands is directly related to the operation and
38 management of these resources managed on behalf of the state by
39 local trustees and is, therefore, a purpose consistent with the public

1 trust for commerce, navigation, and fisheries, and the applicable
2 statutory grants.

3 (o) Because a local trustee of granted public trust lands holds
4 and manages its public trust property, including the lands and
5 revenue derived from that property, as a state asset for the benefit
6 of the people of California and cannot use the trust corpus for
7 general municipal purposes or other purposes not consistent with
8 the public trust doctrine and its statutory grant, and because the
9 State Lands Commission is provided with a mechanism in this act
10 to exempt a local trustee that does not have sufficient state funds,
11 either through the trust or other existing funding mechanisms, to
12 pay for the cost of developing a sea level action plan, Section
13 6311.5 of the Public Resources Code, as added by this act, will
14 not impose costs on local governments.

15 SEC. 2. Section 6311.5 is added to the Public Resources Code,
16 to read:

17 6311.5. (a) For the purposes of this section, the following
18 terms shall have the following meanings:

19 (1) “Local trustee” means a local trustee of granted public trust
20 lands that is a county, city, or district, including water, sanitary,
21 regional park, port, or harbor district, or any other local political
22 or corporate subdivision that has been granted public trust lands
23 through a legislative grant.

24 (2) “Gross public trust revenues” means those gross revenues
25 that are subject to subdivision (b) of Section 6306.

26 (b) Addressing the impacts from sea level rise for all of its
27 legislatively granted public trust lands pursuant to this section shall
28 be among the management priorities of a local trustee. The
29 geographic scope of a local trustee’s assessment of the impacts
30 from sea level rise is not required to go beyond the boundaries of
31 the local trustee’s granted public trust lands.

32 (c) A local trustee whose gross public trust revenues exceed
33 two hundred fifty thousand dollars (\$250,000), shall prepare and
34 submit to the commission, no later than July 1, 2019, a descriptive
35 plan of how the local trustee proposes to address sea level rise. A
36 local trustee whose gross public trust revenues are two hundred
37 fifty thousand dollars (\$250,000) or less may, but is not required,
38 to prepare and submit a plan to the commission.

39 (d) (1) For the purposes of subdivision (c), a local trustee shall
40 consider and use relevant information from the 2009 California

1 Climate Adaptation Strategy prepared by the Natural Resources
2 Agency, the Report on Sea Level Rise Preparedness prepared by
3 the State Lands Commission, the Sea-Level Rise for the Coasts of
4 California, Oregon, and Washington: Past, Present, and Future, a
5 report prepared by the National Academy of Sciences, the
6 Resolution of the California Ocean Protection Council on
7 Sea-Level Rise, and the State of California Sea-Level Rise Interim
8 Guidance Document, any subsequent updates to those reports that
9 become available six months prior to the date the plan is required
10 to be submitted to the commission. A local trustee's plan prepared
11 pursuant to subdivision (c) shall include all of the following:

12 (2) An assessment of the impact of a range of sea level rise on
13 granted public trust lands, as described in the Resolution of the
14 California Ocean Protection Council on Sea-level Rise and the
15 latest version of the State of California Sea-Level Rise Interim
16 Guidance Document.

17 (3) Maps showing the areas that may be affected by sea level
18 rise in the years 2030, 2050, and 2100. These maps shall include
19 the potential impacts of 100-year storm events. A local trustee may
20 rely on appropriate maps generated by other entities.

21 (4) An estimate of the financial cost of the impact of sea level
22 rise on granted public trust lands. The estimate shall consider, but
23 is not limited to, the potential cost of repair of damage to and the
24 value of lost use of improvements and land, and the anticipated
25 cost to prevent or mitigate potential damage.

26 (5) A description of how the local trustee proposes to protect
27 and preserve natural and manmade resources and facilities located,
28 or proposed to be located, on trust lands and operated in connection
29 with the use of the trust lands.

30 (e) In addressing the impacts from sea level rise, a local trustee
31 shall collaborate with its lessees, appropriate local, state, and
32 federal agencies, and other users of the granted public trust lands.

33 (f) A local trustee that prepares a plan pursuant to subdivision
34 (c) shall submit a copy to the commission in hard copy and
35 electronic form. The commission shall make the plan available to
36 the public on its Internet Web Site and, for informational purposes,
37 shall send an electronic copy to each member of the Climate Action
38 Team, the climate change program manager in the office of the
39 Secretary for Environmental Protection, and the Governor's Office
40 of Planning and Research.

1 (g) The commission shall exempt a local trustee of granted
2 public trust lands from this section if the commission finds either
3 of the following:

4 (1) The local trustee's public trust lands are not subject to sea
5 level rise by 2100, based upon the highest projections in the most
6 recent version of the State of California Sea-Level Rise Guidance
7 Document.

8 (2) The cost to provide a description of how the local trustee
9 proposes to address the impacts of sea level rise substantially
10 outweighs the benefit the action would have in preventing the
11 potential economic and environmental harms associated with sea
12 level rise on the local trustee's granted public trust lands.

13 (h) The commission shall exempt a local trustee from this section
14 or grant a deadline extension to the July 1, 2019, deadline for
15 submission of the plan if the revenues derived from its granted
16 public trust lands and assets subject to subdivision (b) of Section
17 6306 or funding made available to it from other sources is not
18 sufficient to pay for the cost of addressing the impacts of sea level
19 rise on granted public trust land and providing a description of
20 these efforts to the commission.

21 (i) The commission shall consider a local trustee's request for
22 an exemption pursuant to subdivision (g) or (h) at a properly
23 noticed commission meeting if the request is made before
24 November 1, 2018.

25 (j) Other than submission of the plan required by subdivision
26 (c), this section does not require a local trustee to implement any
27 specific actions to address sea level rise pursuant to this section.

28 (k) Nothing in this section shall be construed to conflict with
29 any federal regulations governing sea level rise.

30 SEC. 3. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the costs incurred by a local agency to pay for the program of level
33 of service mandated by this act, within the meaning of Section
34 17556 of the Government Code, will be paid solely from the
35 revenues derived from the public trust lands and assets that are
36 granted to that local agency by the state.